No. 52

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, PETITIONER

v.

THE UNION CENTRAL LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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INDEX

CITATIONS

Statutes:

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Michigan.

OPINION BELOW

The opinion of the Supreme Court of Michigan (Appendix A, *infra,* pp. 17–22) is reported at 361 Mich. 283, 105 N.W. 2d 196.

JURISDICTION

The judgment of the Supreme Court of Michigan (Appendix A, *infra,* p. 23) was entered on September 16, 1960. On December 7, 1960, Mr. Justice Stewart extended the time for filing a petition for certiorari to and including February 13, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether a state can defeat the validity of a federal tax lien on real property by requiring, as a condition to the filing of such lien, that the notice describe the real property to which it attaches.

STATUTES INVOLVED

Sections 3670, 3671, and 3672(a)(1), (2) of the Internal Revenue Code of 1939 and Section 7.751, 6 Michigan Statutes Annotated, are set forth in Appendix B, *infra*, pp. 24–26.

STATEMENT[1]

The State of Michigan follows the so-called Torrens system for the registration of real estate titles. Such registration is effected by filing a description of the property and other information in the appropriate state office. Prior to 1956, Michigan law provided that, when the United States wishes to acquire a tax lien on real or personal property within the state, the federal tax official is authorized to file, with the county register of deeds, a notice of lien setting forth, among other things, "a description of the land upon which a lien is claimed" (Act 104, Public Acts of 1923, 6 Mich. Stat. Ann., Sec. 7.751, Appendix B, *infra*, p. 25). The standard notice of lien form which the federal government customarily uses for recording its liens, however, does not describe the property subject to the lien. For, under the Internal Revenue

[1] The facts were stipulated (R. 8a–12a). Record references are to the Appendix to the Brief for the United States in the Supreme Court of Michigan, which is part of the certified record.

Code, the federal government has a lien automatically on assessment "upon all property and rights to property, whether real or personal, belonging to" a person who, upon demand, neglects or refuses to pay any tax for which he is liable (Section 3670, Internal Revenue Code of 1939; Section 6321, Internal Revenue Code of 1954).

On September 10, 1953, the Attorney General of Michigan issued an opinion (No. 1709) holding that the form used by the United States Treasury for filing tax liens did not comply with the provisions of 6 Mich. Stat. Ann., Section 7.751, in that the form of the notice did not contain a description of the land upon which the lien was claimed. He therefore concluded that it was not entitled to recordation in the office of the register of deeds of any county to Michigan. Between the date of that opinion and August 11, 1956, the effective date of repeal of the cited statute and the substitution of the Michigan Uniform Federal Tax Lien Registration Act (Act No. 107, Public Acts of 1956), it was the policy of the office of the Register of Oakland County not to accept for recording notices of federal tax liens which did not contain a description of the land encumbered (R. 10a–11a).

Federal income taxes for 1952 were assessed against Robert G. Peters, Jr., and Helen R. Peters on January 11, 1954, and notice and demand for payment were sent to the taxpayers on January 13, 1954 (R. 11a). On July 2, 1954, a notice of the tax lien arising from this assessment was filed with the Clerk of the United States District Court for the Eastern Dis-

trict of Michigan, Southern Division, in the principal amount of $1,368.07 (R. 9a–10a). The notice of federal tax lien did not contain a description of the property encumbered by the mortgage (R. 10a). The taxpayers, on November 24, 1954, were the owners of real property located in Oakland County.

On November 10, 1954, the taxpayers executed a mortgage in favor of respondent Union Central Life Insurance Company on real property which they owned in Michigan. The mortgage was duly recorded in the office of the County Register of Deeds (R. 8a–9a). It is stipulated that, apart from legal questions raised in this action relating to priority of the lien as between the United States and the insurance company, this mortgage is a valid first lien upon the land (R. 12a).

Taxpayers having defaulted in payments due under the mortgage, the insurance company brought an action to foreclose it in the Circuit Court for Oakland County, joining the United States as a party defendant. The Circuit Court's decree, granting foreclosure, held that the lien of the mortgage was superior to all tax liens filed by the United States[2] (R. 3a). Upon the government's appeal, the Supreme Court of Michigan affirmed with respect to the tax lien for 1952 taxes, holding that the state had designated an office, within the meaning of Section 6323 of the Internal

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[2] The litigation in the courts below also involved liens arising from assessments of 1953 and 1955 income taxes. Since they arose subsequent to the execution of the mortgage, the issue raised in this petition does not concern these liens.

Revenue Code of 1954,[3] for the filing of notices of tax lien and that this office would have accepted the notice had the United States complied with the state law in setting forth in its notice a description of the land encumbered. The Michigan court noted that *United States* v. *Rasmuson,* 253 F. 2d 944 (C.A. 8)—which held that a tax lien was valid even though it did not contain a description of the real estate encumbered, as required by state law—sustained the contention of the United States. The court, however, rejected the *Rasmuson* decision and accepted "as decisive" the contrary holding in *Youngblood* v. *United States,* 141 F. 2d 912 (C.A. 6), where the Michigan recording statute here involved was also in question.

REASONS FOR GRANTING THE WRIT

The Supreme Court of Michigan has decided a federal question of substance not heretofore determined by this Court which is important in the administration of the revenue and which requires uniformity of construction throughout the United States. Moreover, not only is the decision of the court below incorrect, but it—as well as the decision of the Sixth Circuit in *Youngblood* v. *United States,* 141 F. 2d 912, which the Supreme Court of Michigan followed—conflicts with the

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[3] Although the Michigan court cited the cognate provisions of Section 6323(a) of the Internal Revenue Code of 1954 (Appendix C, *infra*, p. 27), Section 3672(a) of the 1939 Code is the governing provision. By virtue of Section 7851(a)(6)(B) of the 1954 Code, Section 3672 of the 1939 Code applies to taxes imposed under both Codes until January 1, 1955. The critical date here is the date of the recording of the mortgage, namely, November 24, 1954 (R. 8a).

decision of the Court of Appeals for the Eighth Circuit in *United States* v. *Rasmuson*, 253 F. 2d 944.

1. The governing statute, Section 3672(a) of the Internal Revenue Code of 1939 (Appendix B, *infra*, p. 24), provides in substance that a tax lien shall not be valid against any mortgagee, until a notice of it has been filed under state or territorial laws in an office in the state in which the property subject to the lien is situated "whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory." However, "whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory," the notice may be filed with the office of the Clerk of the United States District Court for the judicial district in which the property subject to the lien is situated. Here, the state law authorized filing of the notice of federal tax lien only upon an invalid condition, namely, that the notice contain "a description of the land upon which a lien is claimed." 6 Mich. Stat. Ann., Sec. 7.751 (Appendix B, *infra*, p. 25). Since state law imposed an invalid condition before notice could be filed, the state statute did not in effect authorize filing in an office within the state as provided in Section 3672(a). Thus, the filing in the office of the Clerk of the United States District Court was warranted and effective. That this is the Congressional intent is made clear by the legislative history of Section 3672.

In *United States* v. *Snyder*, 149 U.S. 210, this Court held that a lien imposed by Section 3186 of the Revised Statutes, as amended by Section 3 of the Act

of March 1, 1879, c. 125, 20 Stat. 327, from which the present federal tax lien provisions were derived, was not subject to the laws of a state, which relate to recording or registering mortgages and liens. To alleviate the hardship of this decision as it affected subsequent mortgagees, purchasers, and judgment creditors, Congress amended Section 3186 to provide that the lien thereby created "shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed" in the office of the clerk of the district court of the district within which the property subject to such lien is situated; except that "whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State," then such lien shall not be valid in that state as against any mortgagee, purchaser, or judgment creditor "until such notice shall be filed in the office of the registrar or recorder of deeds" of the county in which the property subject to the lien is situated. Act of March 4, 1913, c. 166, 37 Stat. 1016. See *United States* v. *Security Trust & Savings Bank,* 340 U.S. 47, 52–53; H. Rep. No. 1018, 62d Cong., 2d Sess., pp. 1–2.

Section 3186 subsequently was amended by Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791,[4] and enacted in the Internal Revenue Code of 1939, Section 3672(a)(1), to provide for the filing of notice of federal tax liens "in accordance with the law of the

[4] See H. Rep. No. 2, 70th Cong., 1st Sess., p. 35 (1939–1 Cum. Bull. (Part 2), 384, 407); S. Rep. No. 960, 70th Cong., 1st Sess., p. 43 (1939–1 Cum. Bull. (Part 2), 409, 439).

State or Territory in which the property subject to the lien is situated," whenever the state or territory has by law provided for the filing of such notice; or in the office of the clerk of the district court for the judicial district in which the property is situated "whenever the State or Territory has not by law provided for the filing of such notice."[*]

In 1923, following the 1913 amendment to Section 3186 of the Revised Statutes, the State of Michigan adopted the Act here in issue (Act 104, Public Acts of 1923, Appendix B, *infra*, pp. 25–26). In *United States* v. *Maniaci*, 36 F. Supp. 293 (W.D. Mich.), affirmed, 116 F. 2d 935 (C.A. 6), it was held that Section 3186 of the Revised Statutes, as thus amended, required compliance by the United States with lien recording statutes of the states. With the obvious purpose of voiding that decision, Section 3672(a)(1) was amended by Section 505 of the Revenue Act of 1942, c. 619, 56 Stat. 957, by inserting "In the office in which the filing of such notice is authorized by the law of the State or Territory" in lieu of "In accordance with the law of the State or Territory." See H. Rep. No. 2333, 77th Cong., 2d Sess., p. 173 (1942–2 Cum. Bull. 372, 498); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 248 (1942–2 Cum. Bull. 504, 686); *United States* v. *Rasmuson, supra*, 253 F. 2d at 946–947; cf. *Union Planters National Bank* v. *Godwin*, 140 F. Supp.

[*] Section 3672(a) of the 1939 Code was amended in a way not material here by Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, to extend the same protection to "pledgees," and to provide the exception found in Section 3672(b) of the 1939 Code. See *United States* v. *Security Trust & Savings Bank*, *supra*, 340 U.S. at 53; H. Rep. No. 855, 76th Cong., 1st Sess., pp. 25–26 (1939–2 Cum. Bull. 504, 523–524).

528 (W.D. Ark.); *United States* v. *Breaux* (S.D. Calif.), decided January 14, 1953 (45 A.F.T.R. 1220). Despite the clear Congressional purpose of the 1942 amendment, as shown in its legislative history, the court below erroneously adopted the reasoning of the *Maniaci* case, which was, even if originally correct, no longer applicable.

That the purpose of the federal statute has at all times since the Act of March 4, 1913—and at least since 1942—been to afford *notice* to mortgagees, pledgees, purchasers, and judgment creditors, rather than to make the validity of federal tax liens depend upon the requirements of state recording statutes, is plain not only from the legislative history discussed above, but is also supported by a new provision added by subsection (b) of Section 6323 of the Internal Revenue Code of 1954 (Appendix C, *infra*, p. 27):

> If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form of content of a notice of lien.[6]

[6] Treasury Regulations explain this statutory language as follows (Treasury Regulations on Procedure and Administration (1954 Code), Sec. 301.6323–1 (Appendix C, *infra*, p. 28)):

(a) *Invalidity of lien without notice*— * * *

* * * * *

(3) *Form of notice.*—The form to be used for filing the notice of lien shall be Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

[Footnote continued on next page]

2. In *United States* v. *Rasmuson, supra,* a notice of federal tax lien was filed in accordance with a state statute providing: "The filing and recording in the office of the register of deeds of any county in this state of notices of liens for taxes due the United States and discharges and releases of such liens is hereby authorized." Minn. Stat. Ann., Sec. 272.48. Minnesota statutes also provided for an optional Torrens system of title registration as to real estate, and the property in issue in the *Rasmuson* case had been so registered. The court of appeals held in that case that the filing of notice of federal tax lien with the county register of deeds was sufficient under Section 3672(a)(1) of the 1939 Code, even though no specific real property was described in the lien. The court determined that the lien of the United States was not required to contain a description of the real property involved in order to be valid against a subsequent judgment lien.

The court below explicitly rejected the holding in *Rasmuson* and relied instead upon *Youngblood* v. *United States, supra.* There, it was held that the United States could not mandamus a register of deeds in Michigan, a ministerial officer of the state, to accept and file a notice of federal tax lien which did not contain any description of land. The court reasoned, relying on *Maniaci,* that the state could require the

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For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

federal government to describe the real property encumbered in the notices of tax liens before such notices would be accepted for filing.

The only difference between the instant case and *Rasmuson* is that here, since Michigan law did not provide for "an office in which the filing of such notice is authorized" within the meaning of Section 3672(a)(1) of the 1939 Code, the notice of federal tax lien was filed in the office of the clerk of the proper federal district court, as provided by Section 3672(a)(2). The state Attorney General had ruled prior to the filing of notice of lien herein (R. 10a) that the regular form of notice of lien used by the Treasury Department for such purposes was not entitled to recordation in the office of the register of deeds in any county in the state. Accordingly, it was the policy of the Register of Deeds of Oakland County, where the real property involved here was situated, not to accept for recording notices of federal tax liens "which did not contain a legal description of any land" (R. 11a). If the decisions below and in *Youngblood* are correct, it is obvious that a federal notice of tax lien, not describing the land encumbered, would not be accepted by the Oakland County Register of Deeds and there is no judicial remedy to force his acceptance.

In short, the decision of the Supreme Court of Michigan in the instant case is directly in conflict with the decision in *Rasmuson* in holding that the lien rights of the United States are governed by the recording statutes of the State of Michigan. It was on the basis of this holding that the court below made

its ultimate determination that the filing in the federal district court was not valid.

3. The decision of the Supreme Court of Michigan is not only wrong and in conflict with the *Rasmuson* decision, but it presents a problem of major importance in the administration of the federal internal revenue statutes. Uniformity in the application and administration of the taxing statutes is one of the elemental principles of our system of federal taxation, and such uniformity is no less important in the application and administration of the federal tax lien provisions. The primary purpose of the federal lien recording statutes since the Act of March 4, 1913, has been to afford record notice of existing federal tax liens for the protection of would-be mortgagees, pledgees, purchasers, or judgment creditors acquiring such interest in property of the delinquent taxpayer. Congress has never indicated any intention to subject the federal tax lien to the vicissitudes of varying state statutes other than those providing a *place* for the filing of notice of the federal lien. The extent to which Congress has restricted the federal lien by providing for such notice is a federal question, and should be resolved in a manner to permit uniformity of administration.

Moreover, in view of the tremendous number of federal tax liens that are filed annually, it would impose an intolerable burden on the government if, in order to obtain a valid lien on realty, it had to ascertain the identity of every piece of real estate possessed by a delinquent taxpayer. The principle adopted by the court below would require the gov-

ernment's tax assessors to make checks of real property records in every county where taxpayers conceivably might own real estate for all the hundreds of thousands of tax liens filed each year, in an effort to ascertain each taxpayer's holdings. In fact, since federal liens cover property acquired after the lien arose (*Glass City Bank* v. *United States,* 326 U.S. 265), the tax assessors, in order to protect the government fully, would be required constantly to recheck the real property records to discover whether taxpayers had subsequently acquired any realty. The Code does not impose or even suggest such a requirement; on the contrary, it gives the federal government a broad general lien upon "all property and rights to property" of delinquent taxpayers (Section 3670 of the 1939 Code; Section 6371 of the 1954 Code).

It is true that effective August 11, 1956, the State of Michigan adopted the Uniform Federal Tax Lien Registration Act (Act 107, Public Acts of 1956, 6 Mich. Stat. Ann. (1957 Cum. Supp.), Sec. 7.751, 7.752, and 7.753), which repealed Act 104 of the Public Acts of 1923, and that therefore the present question should not arise with respect to federal tax liens recorded since that date. However, although the records are not available, there appears to be a substantial volume of revenue involved for years prior to August 11, 1956. The records of the Internal Revenue Service show that for the four fiscal years ended June 30, 1957, 1958, 1959, and 1960, a total of 30,383 notices of lien were filed by the District Director's office for the District of Michigan, and it is conservatively estimated by the Collection Division of the

Internal Revenue Service that the number would be at least 4,000 a year for prior years. Thus, an unknown, and possibly substantial, amount of litigation involving this issue may yet arise in the future in the State of Michigan.

Moreover, eleven other states have a Torrens system of land title registration.[7] A large volume of litigation will in all likelihood follow if the present erroneous decision is allowed to stand.[8] With respect to these eleven states we are advised by the Internal Revenue Service that a total of 284,225 notices of federal tax liens were filed during the four year period ending June 30, 1960, as follows: Colorado, 10,317; Georgia, 16,207; Hawaii, 2,013; Illinois, 29,465; Massachusetts 10,784; New York, 108,326;

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[7] Colorado (Colo. Rev. Stat. Ann. (1953), 118-10-1—118-10-102); Georgia (Ga. Code Ann. (1957), Sections 60-101—60-9905 (amendment to Sections 60-423 and 60-424 made by Ga. Laws 1952, pp. 164, 165); Hawaii (Hawaii Rev. Laws (1955), Sections 342-1—347-1); Illinois (Ill. Stat. Ann. (Jones, 1955), Sections 132.001-132.109); Massachusetts (Mass. Ann. Laws (1955), c. 185, Sections 1-118); New York (N.Y. Stat. (McKinney, 1956) Real Prop. Law, Sections 310-435, 400); North Carolina (N.C. Gen. Stat. (1955), Sections 43-1—43-57); Ohio (Ohio Rev. Code (1956, Secs 5309.1-5309.98); Oregon (Ore. Rev. Stat. (1955), Sections 94.005-94.990); Virginia (Va. Code (1950), Section 55-112 (continuing in force original statute given in Va. Code (1919) Sections 5225); Washington (Wash. Rev. Code (1955), Sections 65.12.005-65.12.800).

[8] In seven of the Torrens system states, the statutes provide in substance that any federal liens, which the statutes of the state cannot require to appear of record, are exempt. Under the decision below, federal law does not forbid a state to require federal liens to be of record as provided in the Torrens Acts, that is, to require a description of the property encumbered.

North Carolina, 6,770; Ohio, 57,837; Oregon, 10,307; Virginia, 15,497; Washington 16,702. While the precise number of liens filed in such states in earlier years is not known, it is obviously large, and many problems as to their validity may be yet unresolved. As to the many liens which were created prior to the effective date of Section 6323 of the 1954 Code (January 1, 1955), the latter provision, while supporting the government's position (see *supra*, p. 9), obviously would not directly determine their validity.*

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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FEBRUARY 1961.

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* In fact, the decision below would require a tax lien filed since the 1954 Code became applicable likewise to describe the realty encumbered. For the Michigan Supreme Court erroneously determined the instant case on the basis of the 1954 Code (see *supra*, p. 5).

APPENDIX A

Supreme Court, State of Michigan

THE UNION CENTRAL LIFE INSURANCE COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF OHIO, PLAINTIFF AND APPELLEE, *v.* ROBERT G. PETERS, JR., AND HELEN R. PETERS, HIS WIFE, DEFENDANTS, AND UNITED STATES OF AMERICA, DEFENDANT AND APPELLANT

Before the entire bench, BLACK, *J.*

The defendant United States appeals from a decree foreclosing a real estate mortgage, executed by defendants Peters as mortgagors in favor of plaintiff as mortgagee.[1] The decree grants supremacy of the lien of the mortgage, to extent of all sums due and to become due according to its tenor, over competing federal liens for income taxes Mr. and Mrs. Peters failed to pay for the tax periods 1952, 1953 and 1955.

It is stipulated, "apart from the legal questions raised in this action relating to priority of liens," that plaintiff's said mortgage "is a valid and subsisting first lien" upon the mortgaged premises. It is stipulated also that 2 of the 3 liens claimed by the United States were recorded only in the office of the clerk of the proper United States District Court, and it is agreed further that the third of such liens (No. P–1697), which is based on 1955 income taxes owing by Mr. and Mrs. Peters, was not recorded in the register of deeds office until July 12, 1957. Shortly thereafter

[1] The mortgage was duly recorded in the proper register of deeds office November 24, 1954.

plaintiff paid, as was its self-protective right under the terms of the mortgage, unpaid local taxes previously levied against the mortgaged premises. The sum so paid by plaintiff was $646.89.

Refer to §§ 6321, 6322 and 6323 of the revenue code of 1954 (title 26, USCA §§ 6321, 6322 and 6323). Thereunder these federal liens arose against "all property and rights to property" of the taxpayers. Said section 6323 provides that such lien "shall not be valid as against any mortgagee * * * until notice thereof has been filed * * * in the office designated by the law of the State or Territory in which the property subject to the lien is situated * * *." When the events giving rise to this litigation occurred, it was provided by Michigan law (CL 1948, § 211.521) "That whenever the collector of internal revenue * * *, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan * * *, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated * * *." None of the federal liens for unpaid income taxes owing by Mr. and Mrs. Peters were recorded, according to Michigan statute, excepting as previously noted.

Two questions are presented. Such questions, taken from the respective briefs, are as follows:

"1. Should a federal tax lien against Robert G. Peters and wife, which was not filed with the Register of Deeds of Oakland County in accordance with the requirements of the Michigan recording statute, be

allowed to take priority over the mortgage executed by Robert G. Peters and wife to the Appellee?"

"2. Whether the federal tax liens are entitled to priority over payments made by the mortgagee for local taxes, as well as over payments for such taxes which the mortgagee might make in the future during the redemption period following foreclosure?"

First: For an affirmative answer to stated question 1 defendant United States relies particularly on United States v. Rasmuson, CCA 8, 253 F2d 944. For a negative answer to such question plaintiff relies principally on Youngblood v. United States, CCA 6, 141 F2d 912. Rasmuson and Youngblood were not reviewed by the Supreme Court and it is conceded, with respect to the specific question each court considered, that the Supreme Court has not spoken save only by opposing analogies counsel have pressed upon us. Having considered the briefs and arguments addressed to stated question 1, we accept Youngblood's reasoning and application of our statute as decisive. The question is therefore answered by adoption of the following conclusion of the court of appeals of the sixth circuit (Youngblood, p. 915 of report):

"United States v. Snyder, 149 U.S. 210, 13 S. Ct. 846, 37 L. Ed. 705, adds no force to the Government's contention for the reason that, while it was there held that the tax system of the United States is not subject to the recording laws of the states, the Acts of Congress since that decision have required recording of United States tax liens: first, in accordance with the law of the state where the property subject to lien is situated; and, later and presently, in the office in which the filing of notices is authorized by the state law. Upon obvious principles of comity, the Congress of the United States has provided for compliance by the Government with state recording laws. The notice

of tax lien involved in this controversy does not so comply."

Second: This is the more difficult question. Much though we might agree with the plaintiff mortgagee that a decision to subordinate its mortgage-provided lien, for expenditures made and to be made for protection of its primary lien, is bound to impede if not demoralize the so-called mortgage business in Michigan, there appears no alternative than that of due application of what is known in authoritative federal decisions as the "test of choateness." In plain backyard words, the "test of choateness" as applied in cases as at bar means that a properly recorded business lien, or other lien created by operation of local law and duly recorded (if record is required), will receive preference over a federal tax lien only to the extent of the fixed (yes, "choate") amount thereof as of due recordation of the competing federal lien. The legal nature of such test will be found in the recent opinion of the 4th circuit in United States v. Bond, — F 2d — (handed down May 31, 1960 and cited to us since argument of this case). Since the whole ground has been so freshly and thoroughly covered in Bond, and since the federal courts of appeal are usually better equipped than state courts to appraise and apply decisions of the Supreme Court, we abstain from quotation or discussion of the question and refer the reader to Bond for understanding of our ruling that stated question 2 must be answered by granting supremacy of duly recorded federal tax lien No. P-1697 over the mortgagee's lien for local taxes paid by it after July 12, 1957.

Our concern over this result is shared elsewhere, so much as to give impetus to recent effort of the American Bar Association to correct matters by proposed

congressional act.[2] Nevertheless it is the duty of this State Court to follow current decisions of the Supreme Court upon decisive federal questions. This is such a question, since its present solution—shown in Bond—determines the extent to which Congress has consented that federal tax liens may be subordinated to business or statutory liens. And we have no right to look into the "womb of time" or the "seeds of time" to anticipate a possible doctrine of modification (See Scholle v. Secretary of State, 360 Mich 1, 114). If a state court were possessed of such right, it is likely that a portent of re-examination might be found in the newest decisions of the Supreme Court (See United States v. Brosnan, June 13, 1960, and Acquilino v. United States and United States v. Dur-

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[2] "The Federal Government possesses a powerful weapon for the collection of delinquent taxes, a sweeping lien which attaches to all property of the taxpayer, real, personal, or intangible, which he then owns or thereafter acquires. That lien has been a matter of increasingly grave concern to banks, in their capacities both as creditors and as debtors of persons who are or may become delinquent in their taxes. That concern is based principally on a series of Supreme Court decisions, most of them unenlightening *per curiam* reversals, which lay down the rule that no contractual or statutory lien can prevail over even a subsequently arising federal tax lien unless the non-federal lien meets a most exacting standard of 'choateness.' Regardless of state laws to the contrary, a private lien securing a contingent or unliquidated claim, or which attaches to a shifting mass of property, is regarded as 'inchoate' and is subordinated even to federal tax liens that did not exist when the private lienor extended credit on the faith of the debtor's property. The alarming trend of those decisions moved the American Bar Association to appoint a special Committee on Federal Liens, whose legislative recommendations were approved by the Association on February 23, 1959." ("Federal Tax Liens: Effects of the American Bar Association Proposals on Banks and Secured Lenders"; The Banking Law Journal, Vol 76, No. 5, May, 1959, pp. 369, 370).

ham Lumber Co; handed down June 20, 1960). In Acquilino and Durham the Supreme Court hints circumstantially that it may be ready to qualify the mentioned test of "choateness." The hint, however, is neither loud nor clear; hence it is our plain duty to follow the supreme rule Bond expounds from United States v. Security Trust & Sav., 340 US 47; United States v. New Britain, 347 US 81; United States v. Acri, 348 US 211; United States v. Liverpool & L. & G. Ins. Co., 348 US 215; United States v. Scovil, 348 US 218, and United States v. Ball Constr. Co., 355 US 587.

Affirmed in part and reversed in part, and remanded for entry of decree in accordance with the respective answers we have given to the stated questions. No costs.

Stamped: Filed September 16, 1960.

DONALD F. WINTERS,
Clerk, Supreme Court.

Signed: EUGENE F. BLACK.
HARRY F. KELLY.
JOHN R. DETHMERS.
LELAND W. CARR.
TALBOT SMITH.
GEORGE EDWARDS.
THEODORE SOURIS.
THOMAS M. KAVANAGH.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 16th day of September in the year of our Lord one thousand nine hundred and sixty.

Present the Honorable JOHN R. DETHMERS, *Chief Justice*, LELAND W. CARR, HARRY F. KELLY, TALBOT SMITH, EUGENE F. BLACK, GEORGE EDWARDS, THOMAS M. KAVANAGH, THEODORE A. SOURIS, *Associate Justices.*

No. 48252

THE UNION CENTRAL LIFE INSURANCE COMPANY, PLAINTIFF, *v.* ROBERT G. PETERS, ET AL. AND UNITED STATES OF AMERICA (APPELLANT), DEFENDANTS

This cause having been brought to this Court by appeal from the Circuit Court for the County of Oakland, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the County of Oakland, in Chancery be and the same is hereby affirmed in part and reversed in part and remanded to the court below for the entry of a decree in accordance with the opinion filed herein. And it is further ordered, adjudged and decreed that no costs be awarded herein.

APPENDIX B

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. (1952 ed.) 3670)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. (1952 ed.) 3671)

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is

situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

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(26 U.S.C. (1952 ed.) 3672)

6 Michigan Statutes Annotated:

CHAP. 63. MISCELLANEOUS PROVISIONS

* * * * *

FILING OF FEDERAL TAX LIENS

Act 104, 1923, p. 142; eff. Aug. 30

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties of this state, pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States.

The People of the State of Michigan Enact:

SEC. 7.751. *U.S. Tax Liens; Filing of Notice, Contents; Register of Deeds, Duty.* Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting

forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty [50] cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens," indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six [3186] of the revised statutes of the United States. (C.L. '48, § 3746.)

APPENDIX C

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With Clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.*—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of Notice.*—If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid not-

withstanding any law of the State or Territory regarding the form or content of a notice of lien.

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(26 U.S.C. 6323)

Treasury Regulations on Procedure and Administration (1954 Code):

SEC. 301.6323–1. *Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors.*—(a) *Invalidity of lien without notice*— * * *

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(3) *Form of notice.*—The form to be used for filing the notice of lien shall be Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien. For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

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